IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 24263 of 2003

Between:

1. Council of Scientific & Industrial Research

   Rep. By its Director General

   Anusandhan Bhawan, Rafi Marg, New Delhi

2. Centre for Cellular & Molecular Biology

Rep. By its Controller of Administratiion

Uppal Road, Hyderabad – 500 007

3. Recruitment & Assessment Board

Rep. By its Chairperson

Council of Scientific & Industrial Research

Anusandhan Bhawan, Rafi Marg,

New Delhi

..... RESPONDENTS/

PETITIONERS

AND

1. Dr.Yogendra Sharma, S/o Late P.M.Sharma

Scientist Gr.IV (3)

Centre for Cellular & Molecular Biology,

Hyderabad.

2. Dr.Imran Siddiqui, S/o Obaid Siddiqui

Scientist Gr.IV(3),

Centre for Cellular & Molecular Biology,

Hyderabad.

3. Dr.Jyotsna Dhawan, D/o Late Prof.Satish Dhawan

Scientist Gr.IV(2),

Centre for Cellular & Molecular Biology,

Hyderabad.

4. Registrar, Central Administrative Tribunal,

Hyderabad Bench, HACA Bhavan, Hyderabad.

.....PETITIONERS/
RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records from the Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad in judgment dated 5.8.2003 in O.A.No.75 of 2003 and quash the same as it is contrary to law, illegal, arbitrary and beyond the jurisdiction of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad.

Counsel for the Petitioner: MR.CHINNA BASAPPA DESAI

Counsel for the Respondent No.1&2: MR.NUTY RAM MOHAN RAO

The Court made the following :

JUDGMENT: (Per B.Seshasayana Reddy, J)

1. This Writ Petition is directed against the judgment dated 5-8-2003 passed in O.A.No.75 of 2003 on the file of Central Administrative Tribunal, Hyderabad Bench,

Hyderabad by which the learned Tribunal allowed the original application partly and directed the respondents therein to consider the cases of applicants 1 to 3 for assessment to the higher category of Scientists for the assessment year 2000-2001 ending as on 31.3.2001, on the basis of assessment made in furtherance of the interim order dated 23.1.2003, by opening the sealed cover in which the recommendations relating to them were kept since they are found eligible for consideration under CSIR Scientist Recruitment and Assessment Promotion Rules, 2001.

2. The respondents 1 to 3 herein and one Dr.A.J.Rachel filed O.A.No.75 of 2003 against the petitioners herein and another (i.e. R4 herein). Reliefs claimed by he applicants in the said O.A. are as follows:

a. declare the action of the respondents in not calling the applicants for assessment to the higher category as arbitrary, bad in law, unjust and violative of the CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 and also Article 14 and 16 of the Constitution of India;

b. consequently direct the respondents to subject all the applicants for an assessment to the higher category of scientists strictly in accordance with the provisions of CSIR Scientist Recruitment and Assessment Promotion Rules, 2001;

c. also declare that the applicants are entitled to all consequential benefits that flow from out of such an assessment including the monetary benefits of being promoted to the higher category and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case.

The grievance of the applicants is that the respondents therein did not consider the period spent by them on foreign assignment in counting residency period while considering their case for assessment to promotion, which is contrary to CSIR Scientist Recruitment and Assessment Promotion Rules, 2001. The representations

submitted by them to the respondents therein did not yield fruitful result, which necessitated them to approach the Central Administrative Tribunal seeking the above-referred reliefs. It is the case of the applicants that they would be entitled to be assessed to the higher category, if new Rules are applied and that they were not being assessed in accordance with the new Rules and that the rules are not being implemented in accordance with their letter and spirit. It is further the case of the applicants that all of them are entitled to be called on for assessment, but on varied reasons they are being deprived of their fundamental right for being considered for promotion. At the relevant point of time, when they were sent or when they had gone on research assignment and had availed EOL, the position governing the field was that full time assignment abroad, post doctoral fellowship etc. would be computed for assessment in the Merit and Normal Assessment Scheme (for short MANAS). But for such a stipulation it would be hard to believe that the applicants would still have gone on such assignment at the cost of their promotion opportunities in the department. By virtue of the clarification given by the Council of Scientific and Industrial Research on 26-12-2002 and 23-1-2003 the position, which has accrued to them by virtue of the existing rules, is tried to be done away with. It amounts to giving retrospectivity to the said interpretation and that such interpretations can never be given in the form of clarification. Clarification treating the period of EOL as not a part of service for the purpose of minimum residency period is impermissible except in the form of a statutory Rule. Since the clarification is contrary to the Rule, the same is liable to be totally ignored.

3. R2 to R4 therein resisted the application by filing counter. The counter in brief is as follows:

The Council of Scientific and Industrial Research (CSIR), New Delhi is a Society registered under Societies Registration Act, 1860 having its head office at Rafi Marg, New Delhi. It has established 40 laboratories all over India. The CCMB, Hyderabad, is one of the constituents of CSIR. CSIR has framed its own Rules, Regulations and bye-laws. By virtue of bye-laws, its governing body is empowered to frame its own Rules, Regulations for recruitment/career progress of its employees. The affairs of CSIR are administered and controlled by its governing body, which formulated the

service conditions of the employees appointed in CSIR and its constituent laboratories. The CSIR introduced a scheme called MANAS for assessment promotions of Scientific, Technical and Support staff working in various laboratories/institutes of CSIR. These MANAS Rules have been revised w.e.f. 1.4.1992. The scientists were eligible to be assessed for promotion once in every five years for the first chance, if not found fit for promotion for the first chance subsequent chances would be given on completion of 6,7,9 years etc. of the residency period in the existing grade. These assessments under MANAS and revised MANAS were done by the individual laboratories for the members of staff working under their control. With a view to give incentives to scientists in Group IV for the promotion of research and development among CSIR laboratories and institutes, the CSIR have taken a policy decision to revise the Rules for recruitment and assessment in respect of scientific staff in Group IV in CSIR. The new Rules came into effect from `1.1.2001 for assessment promotions and 1.4.2001 for recruitment of Group IV scientists in CSIR. The assessment of all eligible scientists was completed under the revised MANAS up to the period of 31.12.2000. After finalizing the new Rules assessment of scientists in Group IV have been taken to new Rules for the backlog period from 1.1.2001 onwards. The procedure for assessment promotions is laid down from Rule 7 onwards in CSRAP Rules, 2001. Under Rule 7.3 of the said Rules the group IV scientists are entitled to be considered for assessment promotion to the next higher grade on completion of 3,4,5 years of minimum residency period in their existing grade. Rule 7.3(a) provides that “all periods of leave which count for earning increment shall also count towards the minimum residency period”. The original provision of Rule 7.3(a) provided, inter alia, that the period of leave including leave on medical grounds, EOL etc. availed on personal grounds shall not count towards the residency period. It is implied that any leave taken on personal ground like EL, commuted leave, half pay leave, etc., was not to be counted towards the assessment period. Since this provision was operating quite harshly and keeping in view the suggestions received from heads of many laboratories, it was decided to amend the provisions of the rule so that a large number of scientists are not affected adversely. Rule 7.3(a) was amended to its present form and was notified vide letters dated 16.10.2002 and 23-1-2003. In pursuance of the directions of CSIR, CCMB prepared a provisional list of scientists’ in-group IV to be considered for promotion. The list contained probable names of candidates for two years i.e. 31.3.2001 and 31.3.2002. Therefore, the provisional list

prepared by CCMB is for two years for scientists who have completed residency period upto 31.3.2001 and those who have completed residency period upto 31.3.2002. With regard to the first applicant Dr.Yogendra Sharma he went on foreign service for a total period of 665 days during which period he has not drawn salary or increments from CCMB. Therefore, the period of EOL spent by him abroad cannot be counted towards the residency period for his assessment promotion under Rule 7.3(a) of CSRAP Rules, 2001. With regard to applicant No.2 D.Imran Siddiqui he went on foreign assignment by taking extra-ordinary leave from 1.7.98 to 20.1.99. Therefore, this period cannot be included in the residency period in terms of Rule 7.3(a) of CSRAP, Rules, 2001. With regard to applicant No.3 Dr.Jyotsna Dhavan period of service rendered by her as scientist fellow under Quick Hire Scheme could not be considered for assessment promotion to the next higher Grade IV(3) from Gr.IV(2) as the new rules do not provide for counting of the period of adhoc service for the purpose of assessment. With regard to applicant No.4 Dr.A.J.Rachel period of extraordinary leave availed by her cannot be counted for the purpose of assessment for promotion. Even otherwise as per Rule 7.4 of CSRAP Rules, 2001 the eligibility for consideration for assessment promotion is the requirement of minimum threshold percentage of 85% for the first chance and since she has not secured, she is not eligible to be considered even on this ground as on 31.3.2001. As per the provisions of new Rules, the benefit of early assessment cannot be extended to the applicants on the basis of liberalized/normalized APARs. The benefit of Rule 7.4. is to be given on the basis of gradings obtained by scientists in the Annual Confidential Reports i.e. the reports, gradings of which are not communicated to the individuals unlike APAR where a part of the report is communicated to the scientists. As per the new Rules amended from time to time, the period of EOL, which does not count, for earning increments is not to be counted for assessment also. Relaxation contemplated under Rule 8.1 of the said Rules is prospective i.e. those candidates who secured 90% from three successive years in the Annual Confidential Reports (ACR) which came into force with effect from 1.4.2001 will be eligible for relaxation of one year in the residency period.

4. The applicants filed rejoinder contending inter alia, that since their assessment relates to the period prior to 23-1-2003, the amended Rule 7.3(a) cannot be made to

apply to their case, and that the rules as in vogue at the time of assessment also are to be applied.

5. The learned Tribunal passed interim orders on 23.1.2003 directing the writ petitioners to conduct assessment of the applicants for promotion to the higher category and keep the same in a sealed cover. The operative portion of the order reads as follows:

> " 5. For the above reasons, by way of interim relief, we direct the respondents to conduct assessment of the applicants also for promotion to the higher category of posts either on 24th or on 25th January 2003 or on any other subsequent date by giving intimation in writing to the applicants and assessment so made shall be kept in a sealed cover to be considered, depending upon the final result of this O.A."

6. Learned Tribunal on considering the material on record and on hearing both the parties allowed the O.A. so far as applicants 1 to 3 are concerned declaring the action of the department in not considering the period spent on foreign assignment as residency period as arbitrary, unjust and violative of CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 and also Articles 14 and 16 of the Constitution of India. The operative portion of the order reads as follows:

> " 19. In the result, the O.A. is allowed in part declaring the action of the respondents in respect of applicants 1 to 3 as arbitrary, unjust and violative of the CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 and also Articles 14 and 16 of the Constitution of India. The respondents are directed to consider the cases of the applicants 1 to 3 for assessment to the higher category of Scientists for the assessment year 2000-2001 ending as on 31.3.2001 on the basis of the assessments already made in furtherance of the interim order dated 23.1.2003 passed by this Tribunal by opening the sealed cover in which the recommendations relating to them were kept since they are found eligible for consideration under the CSIR Scientist Recruitment and Assessment Promotion Rules, 2001. The applicants 1 to 3 are also entitled to all the consequential benefits if they are found fit for promotion to the next higher post. The O.A. stands dismissed so far as the applicant No.4 is concerned."

Assailing the order, R2 to R4 in O.A.NO.75 of 2003 have filed this Writ Petition.

7. Learned Standing Counsel for the writ petitioners submits that the learned Tribunal failed to see Rule 12 of CSRAP Rules, 2001, whereby and where under MANAS Rules have been repealed. He further submits that Rule 3(a) of CSRAP Rules, 2001 clearly states that EOL on personal ground cannot be counted for residency period since the scientist during that period does not earn any increments. He further submits that what is personal ground under Rule 3(a) of CSRAP Rules, 2001 has been clarified by CSIR under letter dated 23.1.2003 and therefore whatever clarification issued dates back to the effective date of implementation of original Rule. In support of his submissions he placed reliance on the decisions of Supreme Court in JEEWANTI v. KISHAN CHANDRA, D.N.CHANCHALA v. STATE OF MYSORE, ORISSA SMALL INDUSTRIES CORPORATION LIMITED v. NARASIMGHA CHARAN MOHANTY, O.P.LATHER V. SATISH KUMAR KAKKAR and SUNIL KUMAR GOYAL v. RAJASTHAN PUBLIC SERVICE COMMISSION. In the first cited decision the meaning of the word resides has came up for consideration. That was a case arising out of Hindu Marriage Act. The parties to the marriage who originally belonged to a village within the territorial jurisdiction of District Judge, Almora got married in New Delhi and the wife resided with her uncle in Delhi ever since the marriage and the husband also was a resident of Delhi being employed there. The petition for nullity of marriage under Section 12 filed by the husband in the court of the District Judge, Almora on the ground that the parties were residents of a village within the territorial jurisdiction of that Court would not be maintainable as that District Judge would have no jurisdiction to try the petition. It is useful to refer para 12 of the first cited decision as it reads as under:

> " IN order to give jurisdiction on the ground of 'residence'. something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of

being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense residence, is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time: to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length of time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where the actually or personally resides."

In the second cited decision the Supreme Court held that the residency as contemplated by Rule 3 of Mysore Medical Colleges (Selection for Admission) Rules (1970), must prima facie have an element of continuity or regularity in residence and would not mean an intermittent stay such as during the vacations. In the third cited decision the Supreme Court held that the Court is not entitled to assess the respective merit of the candidate for adjudging their suitability for being promoted and the only right the employee has, is a right of consideration. In the fourth cited decision the Supreme Court held that when expert qualification is fixed by competent authority, ordinarily court shall not interfere with such matters. In the fifth cited decision the Supreme Court held that when all other eligible candidates have been interviewed and selected list is finalized, it will not be appropriate for the court to reopen the selection process and direct the commission to take the viva test of the petitioners.

8. Learned counsel appearing for R1 to R3 (applicants) submits that the CSIR had clarified under letter 15.1.1991 that the period of EOL is to be counted for assessment for promotion to the next higher cadre and therefore period spent by the respondents 1 to 3 on foreign assignment is required to be counted for residency

period. He refers to the revised MANAS, which came into operation from 1.4.1992 i.e. for the assessment years 1992-93 onwards, in support of his submission. He submitted his erudite argument by referring to revised MANAS, and the leave applications submitted by the applicants, which contained the recommendations of Head of the Department concerned. He vehemently argued that R1 to 3 (applicants) took foreign assignment for the purpose of scientific and research work in places of international repute and therefore the period spent by them on foreign assignment is to be counted for residency period. He relied on a decision of Supreme Court in Y.V.RANGAIAH V. J.SREENIVASA RAO. In the cited case it has been held that the vacancies which occurred prior to the amended Rules, would be governing by the old Rules and not by the new Rules.

9. It is not in dispute that the assessment of R1 to R3 (applicants 1 to 3) for promotion to the next higher grade is to be considered in accordance with CSIR Scientist Recruitment and Assessment Promotion Rules, 2001. The said Rules came into force w.e.f. 1.1.2001 for assessment and promotions and from 1.4.2002 for recruitment. We make ourselves very clear that CSIR Service Recruitment Rules for recruitment of scientific technical support staff and MANAS (revised) are repealed by CSIR Scientist Recruitment and Assessment Promotion Rules, 2001. Rule 12 of CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 reads as follows:

" 12. **REPEAL AND SAVINGS:** "CSIR Service Recruitment Rules, 1994 for Recruitment of Scientific, Technical and Support Staff" and "Merit and Normal Assessment Scheme 9Revised MANAS) for Scientific, Technical and Support staff", are hereby repealed insofar as they are consistent with these rules to the extent covered under these rules. These new Rules supersede all the existing Rules related to Recruitment and Assessment promotion of scientists in CSIR to the extent the existing rules are inconsistent with these rules. All the existing scientists shall be automatically covered under these Rules."

In view of Rule 12, whatever arguments addressed by the learned counsel for R1 to R3 (applicants 1 to 3) referring to revised MANAS need not be adverted to. The simple question involved in this case is whether the period spent on foreign

assignment by obtaining EOL can be counted for the purpose of residency period.

10. Learned counsel appearing for R1 to R3/applicants vehemently argued that R1 to R3/applicants availed EOL for the purpose of acquiring knowledge in scientific and research work at internationally reputed organizations, which would be beneficial to the department, and therefore the period spent by them on foreign assignment is to be counted for residency period. He refers the recommendations of the Head of Department concerned appearing on the leave applications of respondents 1 to 3. He further submits that the period of EOL granted to an employee for accepting full time assignment abroad as also for post doctorate fellowship even beyond two years will be counted for assessment. He refers letter dated 15-1-1991 addressed to national laboratories, institutions etc. Paragraphs 2 and 3 of the letter read as follows:

> " 2. A doubt has been raised by some Labs./Instts. Whether instructions issued in terms of the aforesaid letter dated 12.6.1986 separate instructions issued vide letter No.27/859/81/ISC-II dated 4/6-9-1985 prohibiting computing the period of extra-ordinary leave for taking up post-doctoral fellowship under Finance Ministry's order dated 25-6-70 for purpose of assessment will still be operative.
>
> 3. The matter has been examined in consultation with Finance. It is accordingly clarified that the period of EOL granted to an employee for accepting full time assignment abroad as also to post-doctoral fellowship even beyond two years will be computed for assessment in MANAS/erstwhile byelaw 71(b) but the same will not be counted for earning increments during the period of such assignment/fellowship. It may, however, be ensured that for getting the above period of EOL computed towards assessment, the individual shall have to pay pensionary contributions/Employer's contribution in case of CPF to the council as payable under the provision of Fundamental Rules by such employees."

The above-referred letter relates to some clarification with regard to the assessment of the eligible candidates as per MANAS. In view of Rule 12 of CSIR Scientist Recruitment and Assessment Promotion Rules, 2001, the guidelines/clarifications

issued under earlier Rules cannot be considered in deciding the issue as to whether the period spent on foreign assignment by availing EOL could be counted for residency period. Rule 7.3 prescribes the minimum period of residency for each grade and it reads as follows:

" The minimum residency period to be completed in a grade for consideration for assessment shall be as under:

Scales of Pay	Designation	Minimum of residency period Linked to performance
Rs.8000-13500	Scientist Group IV(1)	3 years
Rs.10000-15200	Scientist Group IV(2)	4 years
Rs.12000-16500	Scientist Group IV(3)	4 years
Rs.14300-18300	Scientist Group IV(4)	5 years
Rs.16400-20000	Scientist Group IV(5)	5 years

It is explicit from the above-referred rule that the minimum period of residency is linked with performance. Rule 7.3(a) reads as follows:

" The period spent on deputation/foreign service to a non-scientific post and the period of leave including leave on medical grounds, EOL, etc., availed on personal grounds shall not count towards the minimum residency period."

As per Rule 7.3(a), EOL obtained on personal grounds shall not be counted towards minimum residency period.

11. Learned Standing counsel for the writ petitioners submits that CSIR issued some

clarifications with regard to the treatment of the period of EOL and subsequently Rue 7.3 has been amended and, therefore, amended Rule is required to be considered in deciding whether the period spent on foreign assignment by applying EOL can be counted towards the minimum residency period. Whereas it is submitted by the learned counsel appearing for R1 to R3/applicants that the clarifications and amendments were subsequent to 31.3.2001 and therefore that could not be made applicable to the case of R1 to R3/applicants. It is also submitted by him that the clarifications issued by CSIR under letter dated 23-1-2003 cannot be in the nature of amendment to the existing Rule, since the case of R1 to R3/applicants for the assessment to the next higher grade was to be considered as on 31.3.2001. The Rules in force as on that day would be relevant. Unamended Rule 7.3(a) of CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 reads as follows:

> " The period spent on deputation/foreign service to a non-scientific post and the period of leave including leave on medical grounds, EOL, etc., availed on personal grounds shall not count towards the minimum residency period."

By a close reading of the above rule, we are in no doubt to conclude that the period of leave including leave on medical grounds, EOL etc. availed on personal grounds shall not be counted towards the minimum residency period. The learned Tribunal while interpreting Rule 7.3(a) considered the deputation of the applicants on earlier occasions and applied the same analogy to the period spent by them on foreign assignment by applying EOL. It is useful to refer para (14) of the impugned order of the learned Tribunal and it is thus:

> " 14. It is also pointed out by the learned counsel for the applicants that in the normal course the provisions of CCS Fundamental Rules which are being followed by the respondents organization does not prohibit the grant of increment for EOL spent for the purpose of scientific and research projects. It is no doubt pointed out by the learned Standing Counsel for the respondents that the Senior Deputy Secretary has clarified to the letter addressed by the Council dated 15.1.1991 that the periods spent during full time assignment abroad and also post doctoral assignment cannot be counted for earning increment. It is further pointed out by him that on the basis of the said clarification made, an

amendment dated 20-1-2003 has been introduced to the existing Rule 7.3(a) to the effect that all periods of leave which count for earning increment also count towards the minimum residency period. The Director General, CSIR in his capacity as Chairman of Governing Body has approved the said amendment of the rule. But as rightly pointed out by the learned counsel for the applicants that the said amendment introduced on 23.1.2003 cannot be applied in respect of the applicants whose assessment relates to the period ending as on 31-3-2001 where it does not show that it has retrospective effect. So, we are of the opinion that the period which the applicants have spent on EOL for the purpose of scientific and research work in the places of international repute cannot be excluded for computing the period of minimum residency for assessment of promotion under the provisions of Rule 7.3(a). As rightly pointed out by the learned counsel for the applicants, the clarification dated 26th December, 2002 given by the Senior Deputy Secretary to the doubt entertained by the Council by its letter dated 15.1.1991 stated that the periods spent during full time assignment abroad and also post doctoral fellowship cannot be counted for earning increments, cannot be taken into consideration since the said clarification is totally a deviation of the rules itself. The subsequent amendment dated 23.1.2003 brought about the Rule 7.3 (a) incorporating the clarification given, in our view, cannot be applied in respect of the applicants since under the amended rule as in vogue at the time of assessment alone is to be applied. Since the unamended Rule 7.3(a) did not prohibit counting of Extraordinary leave taken for the purposes other than those mentioned therein, the applicants are entitled to be considered for assessment. Further it is pointed out by the learned counsel for the applicants that in the normal course the CCS Fundamental Rules which is being followed by the respondent organization does not prohibit grant of increments for extraordinary leave spent for the purpose of scientific research projects."

The approach of the learned Tribunal in treating the EOL on par with the earlier period of deputation is wholly unsustainable. The period on deputation cannot be equivalent to the period of EOL.

12. Learned counsel appearing for R1 to R3/applicants tried to convince us by referring the recommendations of the head of concerned department on the leave

applications that the foreign assignment taken up by R1 to R3/applicants was to improve their skills and therefore the period of EOL should be counted for the minimum residency period. We do not see any substance in his contention in view of specific mention in Rule 7.3 that minimum residency period is linked to performance. When R1 to R3/applicants were on foreign assignment by taking EOL, there would be no scope of their performance being assessed during the said period by the writ petitioners. Therefore, the period spent by R1 to R3/applicants on foreign assignment by obtaining EOL cannot be counted towards the minimum residency period.

13. Learned counsel for R1 to R3/applicants submits that as per CCS Fundamental Rules, which are being followed by the writ petitioners' organization, do not prohibit granting of increments for extra-ordinary leave spent on scientific projects and research projects and, therefore, the period spent by R1 to R3/applicants by obtaining EOL is to be treated for the purpose of increments also. We do not see any substance in this contention in view of the specific Rule in CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 with regard to the manner of treatment of EOL for the purpose of residency period. The learned Tribunal has thoroughly misread Rule 7.3 and 7.3(a) and thereby erred in recording a finding that the period spent on foreign assignment by obtaining EOL can be counted for the purpose of minimum residency period.

14. In the result, this Writ Petition is allowed setting aside the impugned judgment dated 5-8-2003 passed in O.A.No.75 of 2003 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad and consequently O.A.No.75 of 2003 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad stands dismissed. No costs.

Dated: 06-08-2004 (G.Bikshapathy, J)

Tnb

(B.Seshasayana Reddy, J)

That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this Sixth Day of August, Two Thousand Four.

.... REGISTRAR

To

1. The Registrar, Central Administrative Tribunal, Hyderabad Bench,

HACA Bhavan, Hyderabad.

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